

REMARKS

The Office Action mailed February 5, 2008 has been reviewed and carefully considered. No new matter has been added.

By this Office Action, Claims 1, 2, 4, 16, 17, and 21 have been amended, and Claims 3, 5-7, 9-10, 15, and 19-20 has been cancelled. New Claims 22-31 has been added. Claims 1-2, 4, 11-14, 16-18, and 21-31 are pending.

Claim 20 has been objected to by the Examiner. While the Examiner has referenced Claim 19 in his objection, such reference is misplaced, as Claim 20 does not depend from Claim 19, but rather depends from Claim 1 and further limits Claim 1. Hence, Claim 20 is a proper dependent claim. Nonetheless, the Applicants have cancelled Claim 20. Withdrawal of the objection of Claim 20 is respectfully requested.

Claims 1-5, 7, 9-12, and 14-21 stand rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 6,986,133 to Michael D. O'Brien et al. (hereinafter "O'Brien") in view of U.S. Patent No. 5,991,774 to Allan R. Tate et al. (hereinafter "Tate"). Claim 6 stands rejected under 35 U.S.C. 103(a) as being unpatentable over O'Brien in view of Tate, and further in view of U.S. Patent No. 5,964,831 to Kevin A. Kearns et al. (hereinafter "Kearns"). Claim 13 stands rejected under 35 U.S.C. 103(a) as being unpatentable over O'Brien in view of Tate, and further in view of U.S. Patent No. 6,031,830 to Paul A. Cowen (hereinafter "Cowen").

It is to be noted that Claims 1 and 16 are the pending independent claims in the case.

Further, as noted above, Claims 1, 2, 4, 16, 17, and 21 have been amended, and Claims 3, 5-7, 9-10, 15, and 19-20 have been cancelled.

Support for the amendments to Claims 1, 2, 4, 16, 17, and 21 may be found at least at page 11, lines 3-4 and 13-14, and page 13, lines 4-9 of the Applicants' specification. Hence, per the amendments, the same particular one compatibility parameter is compared to both a compatibility feature of said bi-directional communications device and a non-signature, non-code-error checking feature expected in received and authentic ALG files by said bi-directional communications device. For example, the ALG header size or the ALG body size, as representative of the particular one compatibility parameter, may be used in a comparison to both the compatibility feature of said bi-directional communications device (e.g., an amount of available memory in said bidirectional communications device) and the non-signature, non-code-error checking feature expected in received and authentic ALG files by said bi-directional communications device (e.g., the ALG header size or the ALG body size, e.g., whichever was

respectively used as the particular one compatibility parameter). In such a case, the ALG header size or the ALG body size, as representative of the particular one compatibility parameter, may be compared directly to the compatibility feature of said bi-directional communications device (e.g., an amount of available memory in said bidirectional communications device), since if either one does not fit in available memory, then certainly the entire ALG file will not fit in available memory. Moreover, the ALG body size and the ALG header size may be added together and the sum compared to the compatibility feature of said bi-directional communications device (e.g., an amount of available memory in said bidirectional communications device). Either way, the particular one compatibility parameter is common to both comparisons (with the compatibility feature of said bi-directional communications device and the non-signature, non-code-error checking feature expected in received and authentic ALG files by said bi-directional communications device).

Thus, it is respectfully asserted none of the cited references, either taken singly or in combination, teach or suggest the step of/means for “comparing, at the bi-directional communications device, a particular one compatibility parameter of said ALG file with both a compatibility feature of said bi-directional communications device and a non-signature, non-code-error checking feature expected in received and authentic ALG files by said bi-directional communications device”, as now recited in amended Claims 1 and 16.

At the onset, it is respectfully asserted that neither O’Brien nor Tate teach or suggest (or even mention once) an application level gateway (ALG) file as recited in Claims 1 and 16. The cited portion of O’Brien (O’Brian, col. 6, lines 34-55) only mentions the words “upgrade” and “file”. Neither an “upgrade” nor a “file”, in and of themselves, without any mentioning of the phrase “application level gateway” or even “gateway” for that matter, as a descriptor for that file, cannot be reasonably construed to be an application level gateway file. The Examiner is reminded that a prima facie rejection under 35 U.S.C. 103 must show each element recited in the rejected claim(s). Hence, the cited combination fails to meet the burden required of the Examiner in setting forth a prima facie rejection under 35 U.S.C. 103.

Further, as noted above, each of Claims 1 and 16 recite, *inter alia*, that **a particular one compatibility parameter of said ALG file** is compared with **both a compatibility feature of said bi-directional communications device and a non-signature, non-code-error checking feature expected in received and authentic ALG files by said bi-directional communications device.**

In contrast, O'Brien simply discloses the comparing of a digital signature, and no more. For example, as explicitly disclosed at column 4, lines 56-64:

The agent is a small piece of software that runs continuously on a device. Its main function is to poll the server for upgrade information and, if an upgrade is available, to fetch and apply it to the device. It must also do this securely by ensuring that the upgrade has come from an authorized the [sic] server and that the contents have not been tampered with during transmission. The agent accomplishes this by authenticating and verifying the upgrade via the digital signature that is included in an upgrade module.

Moreover, as further disclosed at column 5, lines 25-34 of O'Brien:

To publish an upgrade, administrators specify the files that constitute the actual upgrade (the upgrade payload), as well as configuration and policy information. Upgrade policies enable system administrators to control upgrade rollouts by specifying which target devices will or will not receive a specific upgrade. The payload is then combined with this information and a digital signature to produce an upgrade module. The digital signature is used by the agent to authenticate the server and to verify the integrity of the upgrade data.

Thus, as disclosed in O'Brien, the upgrade module sent to the agent for installation into the networked device includes the actual upgrade (upgrade payload), configuration and policy information, and a digital signature. In O'Brien, it is only the digital signature that is compared by the agent to verify the integrity of the upgrade data, as explicitly disclosed in numerous places therein.

In fact, the Examiner has admitted "O'Brien does not specifically disclose that at least one compatibility parameter of said ALG file with at least one of at least one features of said bi-directional communications device and at least one non-signature feature expected in received and authentic ALG files by said bi-directional communications device" (Office Action, p. 4).

Moreover, in view of the amendments to Claims 1 and 16, it is respectfully pointed out to the Examiner that a signature relates to a file itself and has nothing to do with a compatibility feature of the bi-directional communications device.

Hence, the signature disclosed in O'Brien does not meet the portion of the limitations of 1 and 16 recited above with respect to **a particular one** *compatibility parameter of said ALG file* is compared with **both** a compatibility feature of said bi-directional communications device and a non-signature, non-code-error checking feature expected in received and authentic ALG files by said bi-directional communications device. Hence, O'Brien does not teach or suggest the above recited limitations of Claims 1 and 16.

Tate does not cure the deficiencies of O'Brien. For example, Tate simply discloses the use a CRC value, which is a code error checking value. In view of the amendments to Claims 1 and 16, it is respectfully pointed out to the Examiner that a CRC value relates to a file itself and has nothing to do with a compatibility feature of the bi-directional communications device.

Moreover, while the Examiner has further mentioned a library file sealed with a unique identification number (Office Action, p. 4, citing Tate, col. 4, lines 26-33), Tate explicitly discloses in the same cited portion (in particular, Tate, col. 3, lines 33-34) that "the version seal **does not rely on** the date, time or **file size**".

Further, while the Examiner has stated that Tate mentions (while not using himself) that software loaders use "the file size stored in the file header to check for integrity of the file itself" (Office Action, p. 5), such use does not also concurrently involve the use of file size as a compatibility feature of a bi-directional communications device, let alone in a comparison at the bi-directional communications device as recited in each of Claims 1 and 16.

Hence, neither the CRC value nor the library version disclosed in Tate meet the portion of the limitations of 1 and 16 recited above with respect to **a particular one** *compatibility parameter of said ALG file* is compared with **both** a compatibility feature of said bi-directional communications device and a non-signature, non-code-error checking feature expected in received and authentic ALG files by said bi-directional communications device. Hence, Tate does not teach or suggest the above recited limitations of Claims 1 and 16.

Further, it is to be noted that while each of Claims 1 and 16 recite that the "comparing" is performed at the bi-directional communications device, in contrast O'Brien discloses the serverName parameter is sent from the agent to the server in order to inquire about and fetch upgrades and, hence, **any comparison of the serverName is performed by the server and not**

the actual device to be upgraded (i.e., the bidirectional communications device) (see, e.g., O'Brien, col. 12, lines 48-54).

Accordingly, neither O'Brien nor Tate, either taken singly or in combination, teach or suggest all the above-recited limitations of Claims 1 and 16.

"A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference." MPEP §2131, citing *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987).

Accordingly, Claims 1 and 16 are patentably distinct and non-obvious over the cited references for at least the reasons set forth above.

Claims 2, 4, 9, 11-14, and 21 directly or indirectly depend from Claim 1 and, thus, includes all the elements of Claim 1. Claims 17-18 directly or indirectly depend from Claim 16 and, thus, includes all the elements of Claim 16. Accordingly, Claims 2, 4, 9, 11-14, and 21 are patentably distinct and non-obvious over the cited references for at least the reasons set forth above with respect to independent Claim 1, and Claims 17-18 are patentably distinct and non-obvious over the cited references for at least the reasons set forth above with respect to independent Claim 16.

Accordingly, reconsideration of the rejections is respectfully requested.

Further, as noted above, new Claims 22-31 have been added. Support for new Claims 22-31 may be found at least at page 11, lines 3-4 and 13-14, and page 13, lines 4-9 of the Applicants' specification.

Claims 22-25 directly or indirectly depend from Claim 1 and, thus, includes all the elements of Claim 1. Claims 25-31 directly or indirectly depend from Claim 16 and, thus, includes all the elements of Claim 16. Accordingly, Claims 22-25 are patentably distinct and non-obvious over the cited references for at least the reasons set forth above with respect to independent Claim 1, and Claims 25-31 are patentably distinct and non-obvious over the cited references for at least the reasons set forth above with respect to independent Claim 16.

In view of the foregoing, Applicants respectfully request that the rejection of the claims set forth in the Office Action of February 5, 2008 be withdrawn, that pending Claims 1-2, 4, 11-14, 16-18, and 21-31 be allowed, and that the case proceed to early issuance of Letters Patent in due course.

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The fee of \$810 required by 37 C.F.R. §1.17(e) for the filing of a Request for Continued Examination (RCE) under 37 C.F.R. §1.114 is authorized. It is believed that no further additional fees or charges are currently due. However, in the event that any additional fees or charges are required at this time in connection with the application, they may be charged to applicants' Deposit Account No.07-0832.

Respectfully submitted,
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